subject to the sovereign power and jurisdiction of the United States also.

The principal case was commenced in April 1875; *Lea* v. *Millar*, in the *fall* of that year, and decided in July 1876. The decision of Judge DRUMMOND thus holds that even though the suit, in which the decree is rendered, was commenced at a later date than the suit in which it was pleaded or offered in evidence, still the bar of such decree is complete, following the doctrine of, among other cases, *United States* v. *Dewey*, 6 Bissell; *Sheldon* v. *Patterson*, 55 Ill. 512.

The principal case is interesting also, as involving necessarily the principle: 1st. That because a name has not been used in the United States for any article by any one prior to its claimed adoption in the United States by a claimant, it cannot be a trade-mark, provided it has been in common use for similar articles to those in question outside of the United States. This point was passed upon in *Burke* v. *Cassin*, 45 Cal. 479. 2d. That if a claimed trade-mark for an article cannot be maintained in the country where the article is made, it cannot be elsewhere, because the alleged trade-mark does not denote in the place where the article is manufactured, that it is made by the claimant, and that elsewhere the alleged trade-mark could merely denote that the article was made where manufactured. This last proposition may involve a conflict of law where the trade-mark laws of two countries differ. The nearest approach to a reported decision upon this point is noticed in the Solicitors' Journal of July 25th 1876, vol. 2, p. 765, where the Master of the Rolls clearly maintained this last proposition as correct, although deciding the case upon another point. That both of these two propositions are correct, will appear when it is remembered, as alike maintained in *Burke* v. *Cassin*, *supra*, and by the Master of the Rolls, that if such priuciples be not maintained, the argument, if carried to its logical conclusion, enabled one of two manufacturers in the United States to steal the trade-mark of the other in a foreign country by prior use in such foreign country, creating for his article a reputation and name under such stolen trade-mark, and by such prior use in a foreign country prevent the real owner from ever using such trade-mark in such foreign country.

CHARLES E. POPE.

Supreme Court of Connecticut.

GEORGE R. HODGDON *v.* NEW YORK, NEW HAVEN AND HARTFORD RAILROAD CO.

In the absence of any special custom, the contract of a shipmaster to carry a cargo to a certain port, means that he is to bring his vessel to some wharf or convenient and usual place of discharge, where he can deliver and the consignee receive the cargo.

The master of a vessel arrived in the port of New Haven, but could not reach any wharf for some days, on account of the ice. *Held*, that he was not entitled to demurrage, as he had not completed his voyage until he reached the wharf.

The fact, that the consignees, during the time the vessel lay in harbor, employed tugs to break a passage through the ice, and bring other vessels to their wharf, did not entitle this master to demand the same help towards the discharge of his cargo.

ASSUMPSIT for demurrage.

On December 14th 1876, the plaintiff received on board of a vessel at Baltimore, a cargo of coal consigned to the defendants, at New Haven, at which port he reported himself on the 24th of December, and asked for a berth in which to discharge; but he did not come to any dock, for the reason that the ice was so thick that he could reach no wharf in the harbor, unless through openings made by steam-tugs or otherwise, before the 19th of January 1877. Between these dates, the defendants daily broke a passage, through which they towed vessels to and from their own docks. On the day of the plaintiff's arrival, they opened a passage and towed through it vessels loaded with coal consigned to themselves, which had arrived prior to that day; and, when his turn came, they opened a passage for and towed his vessel to their dock. The ice delayed him four days, and for this he demanded damages. The defendants had a judgment.

The opinion of the court was delivered by

PARDEE, J.—Passing the question made as to the power of the person signing the bill of lading, and assuming for the purposes of the case that the defendants were bound by his act, still the plaintiff is not entitled to a judgment. He undertook to deliver the coal at the port of New Haven; and twenty-four hours after his arrival at that port and notice thereof to the defendants, they were to have, for the reception of the cargo, one day for every hundred tons thereof; after which they were to pay demurrage.

Upon notice to the defendants of the arrival of the plaintiff's vessel at New Haven, it was their duty to be ready to receive the coal or designate some wharf or other proper place where it could be deposited in a reasonable time. They failing in this duty, it was the right of the plaintiff to treat the contract as broken, and deposit the coal at the usual place, if there was any such, or procure one at their expense. The contract to deliver at the port of New Haven implies more than bringing the vessel into water within a line drawn across the mouth of the harbor; in the absence of any special provision, and of any custom to discharge into lighters, it imports that the carrier is to bring his vessel to some wharf or convenient or customary place of discharge where he can deliver and the consignees can receive the cargo, according to the usage of the port. In the case before us the plaintiff was barred by

the frost from every wharf or landing-place which the defendants could designate or he could select; he could not deliver the coal upon land; the contract did not oblige them to go upon the ice to receive it; in fact, his progress was arrested before he had brought his voyage to the contract termination, and that by no fault of theirs; it was a misfortune which the law must leave where it falls.

As the defendants did not contract to protect the plaintiff against the action of frost, they owed him no duty in respect to it. If for any reason they chose to open a way for the passage of another vessel, the contract relation between themselves and the plaintiff was not thereby changed; he acquired no right to the way thus made; such other vessel having gained prior access to and occupied it, as a matter of law it did not exist so far as the plaintiff is concerned.

In *Parker* v. *Winlow*, 7 E. & B. 940, the tides were neap when the vessel approached the designated wharf, and she ran upon the sand and lay there during some days until the tides were higher. Lord CAMPBELL, C. J., said: "If when the ship got fixed upon the mud bank the master had given notice that he was ready to discharge there, it might have been open to him to show that it was the duty of the other party to take the cargo there, and, if he could have shown such to be their duty, the lay days would have commenced. But no such notice was given; there was no suggestion of any custom requiring the consignees to procure lighters; and both sides acted as if they did not contemplate any unloading until the vessel got up to the wharf." In *McIntosh* v. *Sinclair*, 11 Irish Rep., Com. Law Series 456, PALLES, C. B., said: "The obligation of the shipowner under the charter-party is not alone to carry the cargo to the port of destination, but in addition, to deliver it according to the usage of the port. This duty is not discharged simply by arrival at the port or at the usual place of discharge within the port."

In *Aylward* v. *Smith*, 2 Lowell's Decisions 192 (Dist. Court of Mass., affirmed by the Circuit Court), the libellants' vessel came to the respondent's wharf, on the 20th of December, at high tide, and was made fast outside of another vessel, which was in the berth. This last was hauled out on the next day; but the libellant's vessel was then aground, and so remained; afterwards the ice made round her, and she could not be hauled in for several days. LOWELL, J., said: "The plaintiff says that he arrived at the wharf on the 20th of

December and reported to the defendant, and ended his voyage. This argument is specious; but it assumes that the vessel had arrived at the dock or wharf, when, in truth, she had only very nearly arrived. It has been held in two English cases concerning cargoes of coals shipped under contracts almost identical with this, that delays within the port for a considerable time, owing to a want of sufficient water at the place of delivery, would not require the freighter to receive the coals at another place, or cause the lay days to begin, though the contract had the clause that the ship was to to go only so near to the place as she could safely get. It was held that although she could not safely go up while the tides were neap, yet that was one of the accidents of navigation which a vessel contracting to go to a tidal harbor ran the risk of. The distance at which the ship is kept from her berth by the low water is immaterial, if it be so far that the delivery of the cargo is prevented."

We do not advise a new trial.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ERRORS OF CONNECTICUT.[2]
SUPREME COURT OF ILLINOIS.[3]
SUPREME COURT OF KANSAS.[4]
COURT OF CHANCERY OF NEW JERSEY.[5]

ATTORNEY-GENERAL. See *Corporation; Statute.*

BILLS AND NOTES. See *Evidence.*

Endorser— Waiver of Demand.—While a negotiable note payable on demand, is by statute dishonored at the end of four months if not paid, yet where such a note is on annual or semi-annual interest, it will be presumed, in the absence of evidence to the contrary, that the endorser made his endorsement with no expectation that demand of payment would be made at the end of four months, and therefore with a waiver of such demand: *Hayes* v. *Werner*, 45 Conn.

The taking of security by the endorser at the time of the endorsement, is not in itself a waiver of demand and notice, but it is evidence

[1] Prepared expressly for the American Law Register, from the original opinions filed during October Term 1878. The cases will probably be reported in 7 or 8 Otto.

[2] From John Hooker, Esq., Reporter; to appear in 45 Connecticut Reports.

[3] From Hon. N. L. Freeman, Reporter; to appear in 87 Illinois Reports.

[4] From Hon. W C. Webb, Reporter; to appear in 21 Kansas Reports.

[5] From John H. Stewart, Esq., Reporter; to appear in 30 N. J. Eq. Reports.